

STATE OF MICHIGAN  
COURT OF APPEALS

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ROBERT BRACCI,

Plaintiff-Appellee,

v

EPI PRINTERS, INC.,

Defendant-Appellant.

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UNPUBLISHED

December 20, 2005

No. 260992

Wayne Circuit Court

LC No. 04-434613-CD

Before: Owens, P.J., and Saad and Fort Hood, JJ.

MEMORANDUM.

Defendant appeals by leave granted from the circuit court's order denying its motion for summary disposition. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was employed with defendant as a sales account manager. As a condition of employment, plaintiff signed a document stating that he had received, read, and understood defendant's employment manual, that the employment arrangement was at will, and that any controversy arising therefrom "shall be settled by arbitration." The arbitration agreement is set forth in more detail within the manual, appearing in distinctive type, and including the statements, "any and all claims relating to termination of employment shall be arbitrated . . . . Either party must demand arbitration within one year after the controversy arises . . ." (capitals and boldface omitted).

Defendant terminated plaintiff's employment on June 28, 2003. Plaintiff filed suit in the circuit court on November 8, 2004, alleging unlawful discrimination. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), citing the arbitration agreement, and asserting that the contractual limitations period had expired. The trial court denied the motion on the ground that the employment manual lacked mutuality for purposes of contract formation, in light of defendant's retention of the right to modify the manual unilaterally.

We granted leave, stayed the proceedings below, and ordered this case held in abeyance pending resolution of these issues in other litigation before the Court. A decision concerning both the enforceability of defendant's manual in general, and of the arbitration clause's one-year period of limitations in particular, has since been issued. *Hicks v EPI Printers, Inc.*, 267 Mich App 79; 702 NW2d 883 (2005).

In *Hicks, supra*, this Court held that defendant's employment manual created a valid arbitration agreement, and that its one-year period of limitations was reasonable and enforceable. *Id.* at 84-90. Unmodified portions of the manual, which included the portion in controversy, constituted valid contractual language and thus came to bear, even though any unilateral modifications on defendant's part would have only prospective effect. *Id.* at 85-86. Concerning the period of limitations, this Court held that by agreeing to be bound by the employment manual, the plaintiff "knowingly, intelligently, and voluntarily" waived the three-year period of limitations otherwise provided by statute. *Id.* at 91, citing MCL 600.5805(10).

The manual language litigated in *Hicks, supra*, is virtually identical to that in issue in the instant case. *Id.* at 89. *Hicks, supra*, governs this case. Accordingly, we reverse, and remand this case to the trial court with instructions to grant defendant's motion for summary disposition.

Reversed. We do not retain jurisdiction.

/s/ Donald S. Owens  
/s/ Henry William Saad  
/s/ Karen M. Fort Hood